

RD AN No. 3780 (1930-C)
August 20, 2002

TO: State Directors
Rural Development

ATTENTION: MFH Program Directors or Coordinators, Program Support Staff,
State Civil Rights Coordinators/Managers, Rural Development
Managers and MFH Servicing Office Staff

FROM: Arthur A. Garcia *(Signed by Arthur A. Garcia)*
Administrator
Rural Housing Service

SUBJECT: Civil Rights Laws' Accessibility Requirements that Apply to the
Multi-Family Housing (MFH) Program

PURPOSE/INTENDED OUTCOME:

Reviews of the MFH program indicate a need to clarify Agency and borrower responsibilities regarding the requirements of section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, as amended, and the Americans with Disabilities Act. This Administrative Notice (AN) clarifies that MFH borrowers are responsible to comply with each of these Civil Rights laws. The Agency will facilitate compliance by allowing project resources to be used for that purpose and assuring that no further loans are provided to borrowers who fail to comply. This AN provides direction to Agency staff on monitoring, facilitating and responding to borrower compliance issues. Brief summaries of the accessibility requirements of the Civil Rights laws are provided on Attachment A. Attachment A-1 summarizes how the architectural accessibility requirements of the Civil Rights laws affect the eligibility for Agency loans.

COMPARISON WITH PREVIOUS AN:

This AN replaces AN 3601(1930-C) dated January 4, 2001. Significant changes from the previous AN include the addition of a number of clarifying questions and answers to Attachment A.

EXPIRATION DATE: May 31, 2003

FILING INSTRUCTIONS
Preceding RD
Instruction 1930-C

IMPLEMENTATION RESPONSIBILITIES:

1. Servicing Offices are to monitor borrower compliance as follows:

The scope of Agency reviews are limited and do not relieve the borrower of their legal responsibility to comply with all applicable Civil Rights laws.

Supervisory visits. Review the extent of borrower compliance with the physical accessibility requirements of Civil Rights laws during MFH physical inspections, both during the annual “walk-about” inspection and at the time of the full physical inspection. In addition to the items noted on the new physical inspection form, review the ability of the project’s current budgeting and capital planning to implement any improvements identified by the borrower’s transition plan. Attachment B provides guidance when completing the Agency’s new physical inspection form. Attachment B-1 is to be used when notifying borrowers of review findings.

Compliance reviews. Servicing Office staff designated to conduct Civil Rights compliance reviews will review self-evaluations and transition plans made available by borrowers. Attachments C and C-1 provide guidance to be used when reviewing borrower self-evaluations and transition plans. While the Agency does not approve either the self-evaluation or transition plan, during the compliance review the Agency will use the guidance of Attachment C-2 to determine if the self-evaluation and transition plan addresses potential barriers at the project site.

2. Servicing Offices are to facilitate borrower compliance as follows:

The cost of providing accessible rental housing may be approved by the Agency as an authorized use of project funds. Borrowers are responsible to submit project budgets that address project accessibility needs.

Budget approval. Capital improvements needed to implement a borrower’s transition plan should be included as part of the capital budget portion of Form RD 1930-7, “Project Budget,” when applicable. The Agency may approve compliance-related costs in accordance with normal budget and reserve account approval authorities found in RD Instruction 1930-C. Compliance related costs include reasonable fees and costs for preparing self-evaluations and transition plans.

Reserve account usage. The Agency may approve a borrower’s request to increase the required level of the reserve account to assure that sufficient funds are available to address capital requirements of a transition plan. The use of reserve funds to address the capital requirements identified by the borrower's transition plan may be considered an authorized use of reserve account funds. Loan funds may also be used for this purpose.

3. State and Servicing Offices are to respond to borrower non-compliance as follows:

Borrowers may become liable for fines and penalties imposed by enforcement agencies, loss of tax credits, or legal actions if found in non-compliance of Civil Rights laws. While the Agency does not impose these fines and penalties, RHS will follow regulatory, supervisor, and servicing procedures and loan eligibility requirements when non-compliance is found. The steps to be taken by the Agency are addressed in Attachment C-2, Page 2.

Findings of non-compliance. Borrowers will receive notice of findings of non-compliance determined by the Agency during supervisory visits, compliance reviews, or when reported independently to the Agency. Borrowers should work with the Agency to prevent findings of non-compliance to be elevated to a violation level. Timeframes for compliance will be provided in Agency notices and will vary according to the nature of the non-compliance issue.

Entering findings of non-compliance into MFIS2. Supervisory activities and findings have been modified on MFIS2 to allow a more specific reference to the Agency monitoring of borrower compliance with Civil Rights laws. Servicing Office staff will enter findings and violations of both program rules and Civil Rights non-compliance on MFIS2. Attachment D is a summary of supervisory activities and their findings that have been modified on MFIS2.

Eligibility requirement. For a borrower entity to be considered eligible to receive new loan funds from the Agency in accordance with RD Instruction 1944-E, Section 1944.211 (a) 12, the following must apply:

- The applicant, including the principal partners, must be in compliance with applicable Civil Rights laws in all projects where they are either a borrower or principal partner. For a borrower to be considered in non-compliance with Civil Rights laws for loan eligibility purposes, the borrower's project must be coded on MFIS2 as being in non-monetary default. In accordance with Agency policy a non-monetary default on MFIS2 when the Servicing Office has notified the borrower of a violation using the three servicing letter process, and the borrower has not addressed the violation to the satisfaction of the Servicing Office within 60 days of the first servicing letter.
- For a borrower to be considered eligible to receive rehabilitation or equity funds, the project to be funded must either be in compliance, or be brought into compliance with applicable Civil Rights laws or physical accessibility standards with the receipt of loan funds.

Program management related compliance. See Attachment E for guidance on issues brought to the attention of the Civil Rights Staff. For further information, Agency staff may review a December 9, 1999, report signed by then Acting Administrator, Eileen Fitzgerald which documents an Agency study of disability accessibility in MFH projects. The report is available to Agency staff on the Agency's Intranet web page under Program Support documents (<http://rdintra.usda.gov/default.htm>).

Attachments

Brief Summary of Civil Rights Law with Accessibility Requirements

The Civil Rights laws covering accessibility have different implementation responsibilities but all provide for the protection and nondiscrimination of individuals with disabilities. Borrowers who fail to meet these requirements will make themselves vulnerable to damages and can be required to retrofit their facilities at their expense.

Section 504 of the Rehabilitation Act of 1973.

The Department of Agriculture (USDA) implemented section 504 of the Rehabilitation Act of 1973, on June 10, 1982, by issuing 7 CFR 15b. Section 504's purpose is to assure that no otherwise qualified person with a disability is solely by reason of his or her disability excluded from benefits, or subjected to discrimination under any Federally assisted program or activity.

Compliance Standard: The Uniform Federal Accessibility Standards (UFAS). For more information see www.access-board.gov/ufas/ufas-html/ufas.htm.

Highlights of section 504 Requirements.

In MFH projects ready for occupancy on or before June 10, 1982:

- Borrowers are encouraged to make 5 percent of the units fully accessible. (Structural changes in existing facilities may not be needed where other methods are effective in achieving program accessibility, such as reassignment of services to accessible buildings, assignment of aides to users, and delivery of services at alternate accessible sites. Borrowers are to use the method that provides the most integrated setting.)
- Borrowers must conduct self-evaluations and, if needed, develop transition plans. (Borrowers must make these documents available to the public or Agency upon request.)
- Borrowers must make common areas accessible when financially and structurally feasible. (Common areas include mailboxes, office, community room, trash area, playground, and laundry facilities.)
- When a qualified individual with a disability applies for admission, borrowers must make the unit accessible and usable to the individual.

In MFH projects ready for occupancy after June 10, 1982:

- 5 percent of the units, or one unit, whichever is greater, must be fully accessible.
- The mix of accessible units are to be comparable to the variety of other project units (i.e., 1, 2, and 3 br.).
- All common areas must be fully accessible.
- Borrowers found in non-compliance with accessibility requirements of Civil Rights laws may be required to conduct "self-evaluations" and prepare "transition plans" or respond to other administrative and legal actions.

Fair Housing Act.

The Department of Housing and Urban Development (HUD) issued 24 CFR100.205 to implement the Fair Housing Act, as amended, on January 23, 1989. The Fair Housing Act requires that buildings be constructed to be accessible to individuals with disabilities.

Compliance Standard: The Fair Housing Act/Accessibility Guidelines (FHA/AG). For more information see www.hud.gov:80/library/bookshelf09/fhefhag.cfm.

Highlights of Fair Housing Act Requirements.

In MFH projects ready for occupancy on or before March 13, 1991:

- FHA/AG architectural requirements do not apply, even during project rehabilitation.

In MFH projects ready for occupancy after March 13, 1991:

- All first floor ground units in buildings with four or more dwelling units must be designed and constructed in a manner that is adaptable to individuals with disabilities.
- All units must be adaptable if there is an elevator.
- Covered MFH projects must have:
 1. An accessible entrance on an accessible route
 2. Accessible public and common-use areas
 3. Usable doors
 4. Accessible routes into and through the dwelling unit
 5. Accessible light switches, electrical outlets, and environmental controls
 6. Reinforced bathroom walls, and
 7. Usable kitchens and bathrooms.

Americans with Disabilities Act (ADA).

The Department of Justice (DOJ) issued regulations at 28 CFR parts 35 and 36 to implement the Americans with Disabilities Act (ADA). ADA prohibits discrimination on the basis of disability in areas of public accommodations. ADA does not apply to residential units.

Compliance Standard: Americans with Disabilities Act/Accessibility Guidelines (ADA/AG). For more information see www.access-board.gov/adaag/html/adaag.htm.

Highlights of ADA requirements.

In MFH projects ready for occupancy on or before January 26, 1993:

- When public areas are altered, they must be altered to ADA/AG standards. (Public areas are those areas used by individuals other than tenants and their guests. This includes offices used to pay bills or to inquire about service or employment, public restrooms, and buildings used for voting or public meetings.)

In MFH projects ready for occupancy after January 26, 1993:

- Public areas must be designed and constructed to ADA/AG standards.

Grid to show MFH borrower architectural accessibility requirements of Civil Rights laws and how they affect eligibility for Agency loans (see summaries of laws on Attachment A).

	Section 504 Project ready for occupancy on or before 6-10-82	Section 504 Project ready for occupancy after 6-10-82	Fair Housing Act Project ready for occupancy on or before 3-13-91	Fair Housing Act Project ready for occupancy after 3-13-91	ADA Project ready for occupancy on or before 1-26-93	ADA Project ready for occupancy after 1-26-93
New Construction		Must meet UFAS requirements		Must meet UFAS and FHA/AG requirements		Must meet UFAS, FHA/AG and ADA/AG Requirements
Rehabilitation	1. Encouraged to meet 5% requirement 2. Must meet common area requirement, if feasible 3. Must accommodate on request 4. Must have a self-evaluation 5. If required by self evaluation, must have a transition plan	Must meet above requirements or be addressed during rehabilitation	Not applicable	Must meet above requirements or be addressed during rehabilitation	Must meet UFAS, FHA/AG and ADA/AG requirements or be addressed during rehabilitation	Must meet above requirements or be addressed during rehabilitation
Equity	Prior to the receipt of equity, must meet above requirements	Must meet above requirements or be addressed prior to receipt of equity	Not applicable	Not applicable (not eligible for equity at this time)	Not applicable	Not applicable (not eligible for equity at this time)
A Transfer without Rehabilitation	Prior to transfer, must meet above requirements	Must meet above requirements Prior to transfer	Not applicable	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer

Ongoing project operations - monitored by supervisory visits or compliance reviews	Must meet the requirements above	Must meet above requirements and must have a self evaluation and transition plan if found in noncompliance	Not applicable	Must meet above requirements	Not applicable	Must meet above requirements
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Summary of changes to the new MFH physical inspection form

Use the Agency's physical inspection form as modified to identify if common areas and the apartment units designed and built to be fully accessible meet applicable accessibility guidelines. Form RD 1930-11 is available on the Agency's web site at <http://www.rurdev.usda.gov/rhs/index.html> under the "regulations" button. After "regulations" button, click on "Forms." The accessibility related items on the form are as follows:

Item 13 on the Worksheet for RHS MFH Exterior Physical Standards is modified as follows:

13. COMMON AREA ACCESSIBILITY

- Accessible, designated handicapped parking space(s) provided (including access aisle(s))
- Handicapped parking space properly identified
- Common areas (mailboxes, office, community room, trash area, playground and laundry room) are accessible through walks, ramps, landings, door lever handles, thresholds and widths
- Accessible appliances in laundry
- Mailboxes for accessible units at accessible heights
- Elevators or mechanical lifts are functional and kept in good repair (if installed)
- Common area switches, outlets, thermostats and controls at accessible heights
- Public restrooms have maneuvering room at sinks and toilets, grab bars and lever faucets, insulated pipes, and mirrors at accessible height

Item 15 on the Worksheet for RHS MFH Interior Physical Standards is added to read:

15. FULLY ACCESSIBLE UNITS

- Unit is accessible through walks, ramps, landings, floor coverings, door lever handles, thresholds and door widths
- Kitchens have lever faucets, maneuvering room at sinks and counters, accessible counter heights, controls and insulated pipes
- Bathrooms have maneuvering room at sinks, toilets and showers or tubs, grab bars and lever faucets, insulated pipes, and mirrors at accessible height
- Switches, outlets, thermostats and controls at accessible heights
- Functional emergency call system in bedroom and bathroom (if provided)

- Attachment B-1

Notifying borrowers of the failure to meet responsibilities under Civil Rights laws

If the results of an Agency physical inspection indicate a finding or violation for Item 13 of the Worksheet for RHS MFH Exterior Physical Standards, "COMMON AREA ACCESSIBILITY," item 15 of the Worksheet for RHS MFH Interior Physical Standards, "FULLY ACCESSIBLE UNITS," or other relevant standard during a supervisory visit, include the following language in your contacts with the borrower regarding your findings or violations:

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities or loss of tax credits that may result from legal action brought against you by third parties, continued non-compliance may result in your ineligibility to receive further loan funds from the Agency. You failed to meet the following MFH physical standard(s):

1. COMMON AREA ACCESSIBILITY (Specify)
2. FULLY ACCESSIBLE UNITS (Specify)
3. Other (Specify)"

If the results of an Agency compliance review indicate non-compliance with a Civil Rights law, include the following language in your contacts with the borrower regarding their non-compliance:

"Recent Agency monitoring of the subject project indicates that you are not currently meeting your responsibilities under applicable Civil Rights laws. Since project operating or reserve account funds may be required to address this situation, we request that you advise the Agency of how you intend to comply with the law. In addition to any penalties, liabilities, or loss of tax credits that may result from legal action brought against you by third parties, continued non-compliance may result in your ineligibility to receive further loan funds from the Agency. You are in non-compliance with the following: (Specify)"

Self Evaluations and Transition Plans

On June 11, 1982, USDA issued 7 CFR 15b, which required all borrowers to conduct *self-evaluations* within 1 year of the USDA regulation. In the event that structural changes were necessary, recipients were required to develop *transition plans* that set forth the steps necessary to complete such changes.

Who must conduct self-evaluations and develop transition plans?

- Borrowers of projects ready for occupancy on or before June 10, 1982.
- Borrowers of projects ready for occupancy after June 10, 1982, where the borrower has been found in non-compliance with Civil Rights law (as a remedial action).
- Borrowers who have had complaints filed against them, and the Agency determines it is necessary.
- Borrowers transferring ownership.
- Borrowers of projects receiving rehabilitation or equity loans, when the Agency determines it necessary.
- Borrowers receiving loans for new construction after the date of this AN. The Agency will review the self-evaluation and any transition plan during the pre-occupancy conference.
- All state and local government borrower entities. (DOJ issued a regulation on July 26, 1991, which requires all State and local governments to conduct self-evaluations, unless they had already done so to meet the requirements of section 504.)
- Borrowers receiving loans after January 1, 2001, if a self-evaluation has not been previously conducted within the last 3 years.

What standards do borrowers need to meet?

Regardless of when a project was ready for occupancy, all borrowers are required to have *policies and practices* that do not discriminate against persons with disabilities. Examples of policies and practices are provided on **Attachment C-1**. The architectural *accessibility standards* borrowers must meet will depend on when the project was ready for occupancy and what modifications are planned. See **Attachments A and A-1** for a summary of the architectural accessibility standards. In addition, many State and local governments have their own accessibility standards that also must be met. **Rural Development does not have the authority to waive any of the accessibility requirements.**

What are the self-evaluation and transition plan requirements?

In accordance with 7 CFR 15b the following is required:

Self-Evaluation

- (1) Evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing disabled persons, its current policies and practices and the effects thereof;
- (2) Modify, after consultation with interested persons, including disabled persons or organizations representing disabled persons, any policies and practices that do not meet the requirements of this part;
- (3) Take, after consultation with interested persons, including disabled persons or organizations representing disabled persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; and
- (4) To **maintain a record** of the self-evaluation for at least three years. The record must be made available for public inspection and be provided to the Agency upon request. The self-evaluation record must contain:
 - (a) **a list of the interested persons consulted,**
 - (b) **a description of areas examined and any problems identified, and,**
 - (c) **a description of any modifications made and of any remedial steps taken.**

Transition Plans

At a minimum, transition plans are required to:

- (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to disabled persons;
- (2) Describe in detail the methods that would be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Identify the person responsible for implementation of the plan.

When structural changes are necessary, such changes shall be made within three years and as expeditiously as possible.

Examples of policies and practices to be addressed include:

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations (unless doing so would cause an undue/administrative burden)?
- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?
- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication system*? (Note: If the complex has section 8 assistance from HUD, the complex is required to have a TDD)
- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?
- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who is the relay service operated by? Is the relay service available 24 hours a day and without any added cost to the disabled person?
- Have procedures been established to accommodate hearing and sight impaired applicants and tenants. Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.
- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?
- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?
- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?
- Does management provide their employees with civil rights training?
- When marketing an elderly project, has there been an effort to reach all eligible people. Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.
- Does the recipient notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).
- Does management have a policy that permits persons with disabilities to have service and/or companion animals?
- Does management give persons with disabilities the same choices other applicants are given? For example, both first and second floor apartments.

Monitoring compliance with the Self-Evaluation and Transition Plan

The Agency monitors MFH borrower compliance with Civil Rights laws through the compliance review process. Servicing Office staff who have been trained and designated will conduct the compliance review using the general format of Form RD 400-8. To assure compliance with the self-evaluation and transition plan requirements of Civil Rights laws, during the compliance review Agency staff will:

1. Visually inspect the project to determine if there are physical barriers.
2. Review the management plan to determine project management's method of informing tenants and applicants regarding requests for reasonable accommodations.
 - Visit and interview tenants to determine if the borrower has provided information and made reasonable accommodations upon request by the tenant.
3. Visit and interview tenants in the fully accessible units to determine:
 - If the tenant has need of the accessibility features of the unit and is an eligible occupant.
 - When the tenant is an ineligible occupant of the unit, if the tenant and borrower have executed a lease attachment that requires the tenant to move if an individual needing the handicapped features applies for occupancy.
4. Review the lease agreement, application and other documentation used by the borrower to determine if policies and procedures represent barriers to occupancy.
5. Review the self-evaluation plan and transition plan and compare the physical inspection to determine if there are barriers present that were not addressed or scheduled to be removed.
6. Where transition plans are scheduled to remove barriers over more than a one-year period, review the transition plan and the most recently approved budget to assure that borrower budgeting and the projects financial condition is supportive of the transition plan as written. Transition plans should include the potential cost of removing identified barriers.

The Agency's response to findings of non-compliance.

When the compliance review determines the following:

- The borrower has not completed a self-evaluation when required (see Attachment C).
- The borrower's self-evaluation does not adequately address required components.
- The borrower has not completed a transition plan when required by the self-evaluation.
- The borrower's transition plan does not adequately address required components.
- The borrower has failed to comply with their transition plan.
- The borrower is in-noncompliance with other Civil Rights law requirements.

The Servicing Office takes the following actions:

- Enter the appropriate finding under the Supervisory Activity, "Compliance Review" and provide descriptive comments on MFIS2.
- Notify the borrower in writing (include the statement provided in Attachment B-1) and provide 30 days to come into compliance.

If a borrower fails to either bring themselves into compliance within 30 days or submit an acceptable transition plan to bring themselves into compliance, the Servicing Office will notify the State Civil Rights Coordinator/Manager (SCRC/M). The State Director will forward the issue of non-compliance to the National Office Civil Rights Staff.

The National Office Civil Rights Staff will notify the State Director if further review and processing of the finding will either resolve the finding or require that it be forwarded to the USDA Civil Rights Staff or the Justice Department to resolve the non-compliance issue.

The SCRC/M will notify the State Office MFH Program Director and the Servicing Office of the disposition of the finding of non-compliance.

Summary of supervisory activities and findings modified on MFIS2

MFIS2 has been modified to include the new findings listed below. Review Attachment C for further discussion of self-evaluation and transition plan requirements, Attachment C-2 for a full description on compliance review findings, and Attachment B for the performance standards of item 15 of the worksheet for RHS MFH interior physical standards, "FULLY ACCESSIBLE UNITS" on the MFH physical inspection form.

The following are the findings now available on MFIS2.

Findings

No self-evaluation
Inadequate self-evaluation
No transition plan
Inadequate transition plan
Failure to comply with transition plan
Fully accessible units

The findings are found on the following MFIS2 Supervisory Activities.

Supervisory Activity

Finding

COMPLIANCE REVIEW

No self evaluation
Inadequate self evaluation
No transition plan
Inadequate transition plan
Failure to comply with transition plan

PHYSICAL INSPECTION TRIENNIAL

Fully accessible units

The findings are also found on the following MFIS2 Supervisory Activities that include all findings.

Supervisory Activity

OTHER (inspection)
SITE VISIT (GENERAL)
CONTACT #1
CONTACT #2
CONTACT #3
OTHER (review)

Answers to current MFH program and Civil Rights related compliance issues.

1. Is the International Symbol of Accessibility (ISA) required to be on a MFH project sign?

No. However, borrowers are encouraged to include the ISA on the project sign if:

- There are no physical barriers for someone wishing to inquire or apply for a service or benefit, and
- The project has an accessible route to fully accessible units.

2. Is the Telecommunication Device for the Deaf (TDD) number required to be on the project sign?

When project management communicates with hearing impaired applicants or tenants, they must use either a TTD or an “equally effective communication system.” If a borrower uses a TTD number, the TTD number must be on the project sign. If a borrower uses an equally effective communication system, the borrower must document the process in their self-evaluation and let the public know how this is to be accomplished. However, the borrower is not required to post the relay service phone number on the project sign. Borrowers with Section 8/515 projects are required by HUD to use a TTD.

3. Are service or companion animals that assist the disabled subject to MFH project “pet” rules?

No. They are permitted occupancy under the Fair Housing Act and are defined as follows:

- *Service animal.* An animal with special training in helping an individual cope with a physical impairment that is necessary for a member of a tenant household to cope with a disability.
- *Companion animal.* An animal with no special training in helping an individual cope with a disability but is necessary for a member of a tenant household to cope with a disability.

It is important to note that under reasonable accommodation procedures, a borrower may negotiate service or companion animal occupancy rules with individuals on a case-by-case basis. It is not discriminatory or unreasonable for the borrower to request the tenant to accept responsibility for health and safety, sanitation, and liability for damages to the premises caused by the animal. However, it is not acceptable for a borrower to require a tenant to pay an additional charge, fee, or cost to maintain a service or companion animal. To do so would be to require disabled tenants to meet additional requirements and incur additional expenses based on their being disabled and having a service or companion animal.

4. Does an applicant needing special design features have priority for occupancy over a current tenant without a need for the special design features of a fully accessible unit?

Yes. While tenants without a need for the special design features may occupy a fully accessible unit, prior to occupancy the tenant must agree to move to another unit in the project if a qualified individual needing the special design features applies for occupancy of the fully accessible unit. Borrowers are required to enter into a lease agreement with the tenant without a need for the special design features to assure that a legal right exists to require the tenant to move to another available unit in the project, when necessary. Refer to RD Instruction 1930-C, Exhibit B, Paragraphs VI E 3 d and VIII C 1.

5. What are a few suggestions to improve marketing of fully accessible units?

Before fully accessible units are rented to persons not in need of the special design features, borrowers must conduct a diligent and documented marketing effort to ensure that those in need of the special design features know about the availability for the units. Such contacts may include, Area Commission on Aging, Physical Rehabilitation Centers, Hospitals and Disabled Veterans Organizations. Borrowers are encouraged to use the handicap accessibility logo as a marketing tool on the project sign, in advertising, and on contact letters, leaflets and brochures. When a tenant not needing the design features occupies a fully accessible unit, borrowers are to continue their marketing efforts until a tenant needing the design features is found.

6. How do borrowers meet 7 CFR 15b numerical requirements for fully accessible units?

In MFH projects ready for occupancy after June 10, 1982, 7 CFR 15b standards require:

- At least 5 percent or 1 unit, whichever is greater, must be fully accessible. To meet the 5 percent minimum, borrowers must round up to the next whole unit. For example, a 24-unit MFH project must have at least 2 fully accessible units (8.3 percent) rather than 1 (4.2 percent).
- Fully accessible units must be comparable in variety to other project units. For example, in a 24-unit project with 12 one-bedroom units and 12 two-bedroom units, 1 of the fully accessible units should be a one-bedroom unit and the other should be a two-bedroom unit.
- Rents for fully accessible units must be comparable to other same sized project units.
- If a project has more than one site, fully accessible units may not be clustered at one site, unless only one fully accessible unit is required.
- When a project has a wide variety of units (1, 2, 3 or 4 bedrooms), borrowers are not required to exceed the 5 percent requirement simply to have a fully accessible unit of each type.

7. Who pays for reasonable accommodations?

If an eligible applicant or tenant makes a request for a reasonable accommodation, borrowers are to use project resources to complete and pay for the accommodation. A borrower may deny

such a request only when the accommodation would cause an undue financial/administrative burden, or a fundamental change in operations. The borrower alone is responsible for the consequences of such a determination. If the borrower takes this position, the applicant or tenant must be permitted to make the requested change at their own expense (RD Instruction 1930-C, Exhibit B, Paragraph VI D 3 b).

8. What type of reasonable accommodation is made?

If an eligible applicant or tenant makes a request for a reasonable accommodation, the change to be made should be based on the tenant's assessment of their needs, even when the accommodation may vary from commonly accepted accessibility standards. All improvements should be done in a professional manner and meet local building code requirements.

9. When is it appropriate to make inquiries about a person's disability?

An appropriate question for all applicants to an elderly MFH project is:

- "If you are less than 62 years old, are you eligible for occupancy based on your status as an individual with handicaps or disabilities?"

Regarding the issue of adjustments to income or priority for a unit with special design features, the application form should give the opportunity to make a request for the added benefit. For example, it would be appropriate to ask all applicants and tenants:

- "Do you wish to have priority for an apartment with special design features for persons with disabilities?"
- "Do you wish to claim a \$400 deduction from your income based on a disabling condition?"

By phrasing questions in this manner, applicants are advised of the benefit and allowed to decide for themselves if they wish to disclose a disabling condition. Once an applicant requests that their disability status be considered, inquiries can be made, but only to the extent necessary to verify eligibility. Project management should not attempt to make any determination concerning an applicant's disabling condition.

10. May a guardian sign a rental agreement on behalf of a qualified person with a disability?

While there is no Federal law preventing a guardian from signing a rental agreement on behalf of a qualified person with disabilities, State law may vary. Each borrower should check with their legal counsel. To the extent individual state laws permit a guardian to sign a rental agreement, guardian signatures are to be accepted.

11. What are the requirements for van accessible parking?

The requirements vary based on when a project became ready for occupancy. See Attachment A and A-1 for a discussion of the applicable standards. The parking lot of all projects with public areas such as an on-site office, ready for occupancy after January 26, 1993, must be properly

striped for van accessible parking and access aisles. All projects with public areas ready for occupancy before January 26, 1993, must be striped for van accessible parking and access aisles whenever the parking lot is re-striped.

12. May a borrower allow a resident assistant to occupy a unit overnight to assist a tenant with a disability?

Yes. When a tenant with a disability provides a physician's statement requiring resident assistant care in excess of the established time periods for visitors, it would be a reasonable accommodation to the rules and policies to allow the resident assistant to reside in the unit in excess of established visitor's time. Further, if the need is for the resident assistant to live in the unit, it is a reasonable accommodation to rent a two-bedroom unit to a tenant at their request. The income of a resident assistant is not included in tenant household income.

13. Is the "interested person(s)" who assists or is consulted during the borrower's preparation of their self-evaluation required to visit the project site?

No. While interested persons, including disabled persons or organizations representing disabled persons must be consulted (see Attachment C) they are not required to conduct a site visit.

14. Is the self-evaluation required to be maintained at the project site?

Yes, if the project has an office. If there is no office, the borrower is still obligated to make the self-evaluation available to the public upon request. The public includes any applicant, tenant and the Agency. It is not reasonable for the borrower to expect the public to drive to a location other than the project to view the self-evaluation.

15. What can be done with projects ready for occupancy after June 10, 1982, that were not built in accordance with UFAS standards, where it is either structurally impractical or financially infeasible to make the required changes?

Typically, the borrower should seek guidance from their project architect before making this determination. The Agency will need documentation that it is structurally impractical from a knowledgeable source. For example, in a project built using a split foyer design, it may be structurally impractical to make changes. The borrower might try to establish a referral agreement with another project in the local market area with a fully accessible unit. If no referral agreement is possible to make the program accessible, the Agency may administratively recognize that the borrower is unable to address their outstanding non-compliance issues. In this case, all avenues have been explored, and the Servicing Office will document the case file to fully explain the situation and the borrower's attempts to resolve the problem, remove the finding(s) from MFIS2 and discontinue reporting the situation through the post supervisory visit and compliance review reporting process.

In some instances, a borrower may claim that a project is not able to meet UFAS standards because the project's financial condition is such that the change would create an undue financial

burden. For example, the project is located in a poor rental market and rents are insufficient to address capital needs. While the Agency has no mechanism for waiving the requirements of UFAS standards for financial reasons, the borrower may request a waiver from the Secretary of Agriculture. For such a waiver, the borrower must document the financial condition of the project as well as attempts to seek local, state, private and Federal funding for grants or loans to correct the condition. As of the date of this AN, no such waiver has been granted.

- 16. Attachment C states that regardless of when a project was ready for occupancy, all borrowers are required to have "policies and practices" that do not discriminate against persons with disabilities which are provided on Attachment C-1. Where do the borrowers document these "policies and practices"?**

The Management Plan.

- 17. If these policies and practices are not presently covered in the management plan should we ask everybody to provide written documentation of the "policies" now or, do we wait until the management plan is renewed, or the next supervisory visit/compliance review (whichever comes first)?**

We recommend that you be sure borrowers understand that these issues should be addressed in their management plans and that you will review these items in your supervisory visits, compliance reviews and management plan approvals. However, this AN does not require the Agency to conduct a full review of all existing management plans at this time.

- 18. Attachment C also states that borrowers are supposed to maintain a record of the self-evaluation for at least three years. How are we going to document if they have one, if the three-year period is past?**

Part V of Form RD 400-8, "Compliance Review," should contain a record of self-evaluation status based on Agency review. While the borrower is responsible to retain records for their own protection, we can retain any self-evaluation shared with us by the borrower in our files.

- 19. Attachment C states that when structural changes are necessary, such changes shall be made within 3 years and as expeditiously as possible. What if major structural changes are needed and they can't be accomplished within a 3-year period?**

Realistically, all structural changes should be accomplished within a three-year time frame unless funding is an issue. When changes are not made within the time frame of the transition plan, the borrower should prepare a new or revised 3-year transition plan that documents what has been done, what will be completed, and time frames for completion. Before we accept a plan, we need to be sure that the borrower is sincerely attempting to comply with the accessibility requirements. We also need to assure that rents and reserve account (RA) withdrawals are approved when necessary to make the changes.

20. Should transition plans exceed 3 years? We have seen some that just say “when funds are available.” These plans are typically in projects where there is very little or no RAs and rents must be kept low to keep tenants. In these cases, there may never be funds available.

Transition plans may not exceed a 3-year period and “when funds are available” is never a good time frame. If a poor rental market is the real issue, the transition plan should be clear that the market is the reason the borrower can not make needed improvements. If there is some way of addressing the cash flow problem (i.e., transfer RA, seek state or local grants, etc.) then the Agency should be ready to help the borrower move in that direction. This means that if a rent increase is needed, either to fund the improvement or build up the RA, the transition plan should document the amount that is needed and the Agency should be willing to approve higher rents. Also, the borrower should document their efforts to check for funding elsewhere. Some state and local governments have grant or loan funds that can be used for providing accessibility. Borrowers should be encouraged to seek out such funds if available.

21. Attachment C-2 has 6 additional items we are to review during the compliance review. Where are these items to be documented?

You will notice that some of the answers are addressed by questions already on the physical inspection form or the compliance review. While, the Civil Rights Staff has not established a separate document for the purpose of documenting this review, your assessment of the borrowers response to the 6 items should be documented in part V or VI of Form RD 400-8.

22. If we should find a borrower out of compliance with accessibility requirements and the borrower comes back with a transition plan that says they will make accommodations as needed, will the Agency be able to accept that and say that the borrower is now in compliance for tracking purposes?

Yes, however the borrower is technically out of compliance until the problem is corrected. However, if the borrower has a self-evaluation and a transition plan that describes how that particular finding will be resolved, we have established that the borrower is taking the appropriate steps to resolve their problem by establishing a timetable for corrective action in the transition plan. A good analogy is how we use our workout plan. If a workout plan is in place and being followed, the Agency can recognize that the default finding is being resolved. Therefore, we treat the project differently in our classification system.

23. On page 3 of this AN under findings of non-compliance the last sentence says, "Time frames for compliance will be provided in Agency notices and will vary according to the nature of the non-compliance issue." Could you give us an example?

For example, according to Civil Rights Staff policy, findings on the compliance review should be corrected in 30 days. This timeframe may be expanded if conditions warrant. According to MFH program direction, supervisory visit findings can be resolved using different timeframes, generally varying from 30 to 90 days. The Servicing Office has some flexibility in providing corrective deadlines for findings found on the supervisory visit. Usually these deadlines are established in relationship to the seriousness of the finding. Additionally, the letter to the borrower requesting corrective actions can combine findings and corrective time frames from both the compliance review and the supervisory visit.

- 24. Do you see any problem with the Agency keeping a copy of the self-evaluation and transition plan in the borrower's file? We initially told our field staff not to keep a copy because we didn't want the borrower to construe that as Agency approval of the documents; however, some of our field employees have asked for copies and are keeping them in the file.**

It is a good idea to keep the self-evaluations and transition plans in the file because you should be reviewing them with each management plan and budget approval. Routine budget approvals should now include reviewing the transition plan to make sure that identified capital improvements are in the budget.

- 25. Does this AN now require Agency field staff to become “accessibility” police?**

It is important to understand that since June 10, 1982, 7 CFR 15b requires the Agency to conduct compliance reviews regarding accessibility requirements. The primary reason the AN was written was to consolidate and clarify existing Agency understandings regarding accessibility in MFH projects. The first three pages of this AN go into much detail about the responsibilities of the Agency and the borrower. The bottom line is that the borrower is the party responsible for project compliance with accessibility laws. The Agency's role is to assure that the program, in general, is administered in accordance with accessibility laws. We identify non-compliance during limited reviews, make project resources available to help solve problems, report problems through an internal reporting process, and respond to continued serious instances of non-compliance using established MFH program servicing tools. There are no new servicing or enforcement roles required by this AN.

- 26. UFAS requires that wall cabinets in accessible units be mounted at 48" above the floor. In rehabs, that has required relocating them. One owner requested mounting a separate shelf 48" above the floor, between the base and wall cabinets. Is this OK?**

The Access Board has indicated that a shelf between base cabinets provides “equivalent” accessibility when it is not possible to lower wall cabinets. The shelf should not become the standard solution, but can be considered on a case by case basis. For example, if funds for rehabilitation are limited, the shelf may be a less expensive solution to removing and relocating wall cabinets. If the project is fully funded, and money is available, the wall cabinets should be relocated. Although deemed “equivalent”, the shelf does not have doors to cover the storage space.

- 27. Is a 30" x 34" high workspace required in an accessible kitchen? While UFAS 4.34.6.4 requires this, it is not included in the list in Attachment B or added to the MFH Physical Inspection form.**

Yes, it's required. The list in Attachment B was not intended to be all inclusive of UFAS standards, but to hit the big issues.

28. UFAS 4.13.9 calls for lever handles on entrance doors to accessible units. An item on the MFH Physical Inspection form asks if lever handles were provided. Does this apply to all apartment doors?

UFAS requires lever handles on apartment unit entry doors only. The question on the MFH Physical Inspection form refers to apartment unit entry doors only. If a tenant needs lever handles throughout a unit, they may be requested as a “reasonable accommodation”.

29. Where are grab bars required?

Grab bars are required in the 5 percent of units that are “fully accessible.” UFAS 4.34.5 uses the language “If provided, grab bars will” Our Agency has taken the position that grab bars will be installed in order to make the “fully accessible” unit ready for a person with disabilities.

Grab bars are also provided in those units in which a tenant has requested them as a “reasonable accommodation.” In those ground floor units constructed since 1991, FHA/AG required blocking for “adaptability.” In those units, grab bars may be installed later as a form of “reasonable accommodation” when requested.

30. How do people writing Transition Plans know to require grab bars?

Since writers of Transition Plans base them on UFAS, the proposed plan may call for installing the blocking only, and not installing the grab bars. In requiring a Self Evaluation and possibly a Transition Plan from a borrower, field staff should make them aware that the Agency has taken the position that grab bars are required in 5 percent of the units that are “fully accessible.”

31. An item on the MFH Physical Inspection form refers to a “functional emergency call system.” Are emergency call systems required in all fully accessible units?

If the fully accessible unit presently has an emergency call system, it must be functional. If no emergency call system is in place, the borrower does not have to provide one at this time. It may be necessary to add one as a “reasonable accommodation” per tenant request. There has been considerable confusion on this issue, and we realize that this may be a different answer than you have received in the past.

32. Is additional maneuvering room in the bathroom required?

Some Transition Plans are indicating a need to enlarge the bathroom to provide a 5' turning circle, which UFAS requires, in a public bathroom. Writers of Transition Plans are incorrectly applying this requirement to a dwelling unit. Agency staff should understand that a dwelling unit bathroom must have clear floor space at the tub/shower and commode, but a 5' turning circle is not required within a dwelling unit bath. Also, UFAS provides an exception in 4.22.3 for public toilets with only one lavatory and commode. In those toilets, a 5' turning circle is not required.

33. In addition to the requirement that 5 percent of a project's units must be fully accessible for persons with mobility impairments, is it true that MFH projects must also meet a requirement that an additional 2 percent of the units (over and above the 5 percent) must be made fully accessible by individuals with hearing or visual impairments?

To implement Section 504, both HUD and USDA published regulations to apply to their respective programs. While HUD's regulations do require that 2 percent of the units (over and above the 5 percent that are made fully accessible for persons with mobility impairments) be made fully accessible by individuals with hearing or visual impairments, USDA regulations do not. Consequently, MFH projects with project based Section 8 that were built on or after July 11, 1988, must meet this requirement, but MFH projects without project based Section 8 do not.

34. Are front-loading washers and dryers required in MFH project laundry rooms?

Yes. UFAS 4.34.7.2 states that "washing machines and clothes dryers in common use laundry rooms shall be front loading." RHS has taken the position that this requirement is met if at least one washer and one dryer is front loading. This position was taken, in part, in recognition that there may be some increase in cost to provide front loading washers.

35. If structural accessibility requirements of the Fair Housing Act were not met due to negligence of the borrower or their architect during construction, what can be done to get them corrected?

In cases where fault is established, it is a proper servicing action to seek corrections by borrowers at their own expense. To accomplish these corrections, some borrowers may in turn seek to enforce contractual agreements with project architects.

36. When a MFH tenant requests a reasonable accommodation, my understanding is that project management should answer the following questions: whether the tenant household contains a qualified individual with a disability; whether the requested accommodation is related to the disability; and whether the requested accommodation is reasonable. If all these conditions are met, should project management automatically make a \$400 adjustment to income?

Not automatically, but project management should examine the tenant household's situation to see if any of the adjusted income reporting threshold changes required by RD Instruction 1930-C, Exhibit B, Paragraph VII F 3 will be met, especially a household's potential change in status from non-elderly to elderly. There is no requirement that prevents a borrower from making a reasonable accommodation without receiving verification from the tenant that a household member meets the RD Instruction 1930-C, Exhibit B, Paragraph II definition of an individual with a handicap or disability. However, for a household to be considered elderly, the tenant or co-tenant must be the person with a verified handicap or disability, rather than a household member who is not the tenant or co-tenant. Consequently, there may be some instances where a tenant chooses not to apply or is ineligible for an elderly household status. Finally, we recommend that application forms ask questions in a direct manner, making the benefit of an elderly designation known, and then leaving it up to the applicant to request the designation (see question #9 of this attachment).

These issues are not meant to cover all situations regarding accessibility. Rural Development servicing staffs are to consult with their MFH State Office Staff, SCRC/M and the Program Support Staff on issues regarding accessibility.

